



Paper No. 29

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DEC 18 2002

OFFICE OF PETITIONS

In re Application of
Zucker, et al.
Application No. 09/100,671
Filed: July 19, 1998
Attorney Docket No. 19010.715

DECISION ON PETITION

This is a decision on the petition filed on October 15, 2002, pursuant to 37 CFR 1.137(b), to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to timely file a proper response to the non-final Office action, mailed October 31, 2001. A Request for Permission to Withdraw as Attorney of Record was filed on January 14, 2002. However, this request was denied in a decision mailed on April 29, 2002. No proper response to the non-final action having been received, the above-identified application became abandoned on February 1, 2002. A Notice of Abandonment was mailed on June 17, 2002.

With the instant petition, petitioner paid the petition fee, made the proper statement of unintentional delay, and submitted a reply to the non-final Office action of October 31, 2001. Accordingly, petitioner has met the requirements for a grantable petition under 37 CFR 1.137(b).

With the instant petition, petitioner filed an Associate Power of Attorney. However, the Associate Power of Attorney was only signed by one of the three inventors, Mr. Douglas L. Peckover. Petitioner is directed to 37 CFR 1.33(b), which states:

Papers filed in a patent application must be signed by:

- (1) A registered attorney or agent of record appointed in compliance with § 1.34(b);
- (2) A registered attorney or agent not of record who acts in a representative capacity under the provisions of § 1.34(a);
- (3) An assignee as provided for under § 3.71(b) of this chapter; or
- (4) **All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.**¹

¹ 37 CFR 1.33(b) (emphasis added).

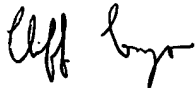
Accordingly, until a proper power of attorney or agent is submitted, correspondence in the application will continue to be mailed to the above-address of record. A courtesy copy of this decision is being mailed to the person signing the petition.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay.² In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Pursuant to 37 CFR 1.136, an extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment. Accordingly, since the \$980 extension of time fee submitted with the petition on October 15, 2002 was subsequent to the maximum period obtainable for reply (April 30, 2002), petitioner may request a refund of this fee by writing to the Office of Finance, Refund Section. A copy of this decision should accompany petitioner's request.

The application file is being forwarded to Technology Center 3600 for consideration of petitioner's Request for Reconsideration of Examiner's Action, filed October 15, 2002.

Telephone inquiries concerning this decision should be directed to the undersigned at (703)305-0272.



Cliff Congo
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Office of the Deputy Commissioner
for Patent Examination Policy

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² See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997).